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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Air Shunt Instruments

**File:** B-293766

**Date:** June 4, 2004

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Henry Nakkashian for the protester.

Isaac Johnson, Jr., Esq., Department of Homeland Security, U.S. Coast Guard, for the agency.

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## **DIGEST**

Protest challenging past performance evaluation is denied where record fails to demonstrate that the protester was prejudiced by agency's miscalculation of protester's on-time delivery rate under prior contracts or that agency improperly attributed quality deficiencies to the protester.

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## **DECISION**

Air Shunt Instruments protests the evaluation of its proposal and the award of a contract to InAir Aviation Services under request for proposals (RFP) No. DTCG38-03-R-H00002, issued by the U.S. Coast Guard, Aircraft Repair and Supply Center (ARSC), for the rework of C130 aircraft electronic components. The protester takes issue with the agency's evaluation of its past performance.

We deny the protest.

The RFP, which was issued as a small business set-aside, contemplated the award of a fixed-price requirements contract for a base period of 1 year, plus four 1-year option periods. Offerors were to furnish prices (on a per-unit and hourly labor-rate basis) for the repair of altitude indicators, horizontal indicators, and air speed computers. The solicitation, as amended, provided for single or multiple awards to the offeror(s) whose offer(s) represented the "best value" to the government. Technical factors, consisting of past performance, deficiency reports, and delivery data, and price were to be of equal weight in the evaluation. The RFP stated that offerors had to receive a satisfactory past performance rating to be considered for

award and instructed offerors to provide at least three references capable of verifying the offeror's experience in performing the required work.

Sixteen offerors submitted proposals prior to the August 25, 2003 closing date. The contracting officer determined that while Air Shunt had submitted the lowest prices for the altitude and horizontal indicators, its past performance was unsatisfactory, and it therefore would not be in the government's best interest to award to it. The contracting officer further determined that InAir's combination of past performance and price represented the best value to the government. On February 26, 2004, the agency awarded a contract to InAir. On March 3, Air Shunt protested to our Office.

In evaluating the protester's past performance, the agency contract specialist contacted the three references identified by Air Shunt in its proposal and audited Air Shunt's performance on three ARSC contracts.<sup>1</sup> According to the protester, two of its references were for work on altitude indicators and one was for work on horizontal indicators. One of Air Shunt's references responded to the contract specialist's inquiry with "no comment"; as a result, the agency assigned Air Shunt a past performance rating of neutral for the contract. Another reference responded that his company had ceased doing business with Air Shunt in the late 1990s due to quality issues; the agency assigned Air Shunt a rating of unsatisfactory for this contract. The third reference stated that Air Shunt had met delivery schedules and had no quality deficiency reports (QDR) associated with its performance; this reference rated Air Shunt as a favorable contractor, leading the agency to assign Air Shunt a past performance rating of satisfactory for this contract.

With regard to the three ARSC contracts that the agency audited, none was for work identical to that solicited here. One of the contracts, No. DTCG38-01-D-H00005, was for the rework of air speed indicators. Based on her review of the delivery orders issued under that contract, the contract specialist determined that Air Shunt had an 83 percent on-time delivery rate and a QDR rate of 10.9 percent, leading the Coast Guard to rate Air Shunt's performance under the contract as marginally satisfactory. The second ARSC contract that the agency audited, No. DTCG-00-D-H00013, was for the rework of power supplies and altitude alerters. The contract specialist determined that Air Shunt's on-time delivery rate for this contract was 60 percent, and the agency again assigned the protester's performance a rating of marginally satisfactory. With regard to the third ARSC contract, No. DTCG38-01-D-H202032, for the rework of hover/taxi lights used on HH65 aircraft, the cognizant contracting office reported that Air Shunt had a late rate of 81 percent and had not improved its performance when given the chance, leading the contracting office to choose not to exercise remaining contract year options. The agency rated the protester's performance on this contract as unsatisfactory.

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<sup>1</sup> The agency explains that the "audits" it refers to involved reviewing every delivery order issued under the contracts for compliance with the terms of the contract.

The protester takes issue with the Coast Guard's evaluation of its past performance, arguing that the agency miscalculated its on-time delivery rate under contract Nos. --H00005 and --H00013 and unfairly construed the issuance of QDRs under those contracts as indicative of negative performance on its part. The protester also argues that the agency should not have rated as unsatisfactory its performance for the company that indicated that it no longer did business with Air Shunt.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. Thomas Brand Siding Co., Inc., B-286914.3, Mar. 12, 2001, 2001 CPD ¶ 53 at 4. Here, as explained below, while the agency erred in one aspect of its past performance evaluation, we think that its overall rating of the protester's past performance as unsatisfactory was reasonable.<sup>2</sup>

First, the protester alleges that the agency miscalculated its on-time delivery rate under contract Nos. --H00005 and --H00013 by using the date that the agency shipped the items requiring repair to it (as opposed to the date that it received the items) as the performance start date and the date that the agency accepted the items after repair (as opposed to the date that the agency received the items back) as the delivery date. The agency denies that it used the dates alleged by the protester in its calculations, however; according to the contracting specialist, she used the date that Air Shunt received the item for repair, as reported to her by the protester, as the performance start date (except in instances in which the protester failed to report the date, in which event she added 2 weeks for delivery time to the performance period) and the date that the item was received back at ARSC as the delivery date.

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<sup>2</sup> As a preliminary matter, the agency argues that Air Shunt's protest should be dismissed for failure to comply with the requirements of our Bid Protest Regulations, 4 C.F.R. § 21.1(c) (2004), which require that a protest include the street address, electronic mail address, and telephone and facsimile numbers of the protester ((c)(1)); be signed by the protester or its representative ((c)(2)); establish that the protester is an interested party for the purpose of filing a protest ((c)(5)); establish that the protest is timely ((c)(6)); request a ruling by the Comptroller General ((c)(7)); and state the form of relief requested ((c)(8)). We do not think that dismissal of the protest based on these alleged deficiencies is warranted given that none of the omissions materially affected the agency's ability to respond to the protest. Further, neither the allegation that the protest fails to establish the protester is an interested party nor the allegation that the protest fails to establish its timeliness warrants dismissal given that there is no indication on the face of the protest--and the agency itself does not assert--that the protester is not interested or that the protest is untimely.

Accordingly, the record does not support the protester's assertions regarding the methodology used by the agency to calculate on-time delivery rates.

The protester further asserts that the agency miscalculated its on-time delivery rate by failing to take into account "all the extensions and modifications requested and [received] by Air Shunt Instruments to increase the deliveries because of parts procurements." Protester's Comments, Apr. 8, 2004. Air Shunt has offered no detail regarding the extensions that it allegedly sought and obtained, however; thus we have no basis upon which to conclude that the agency erroneously failed to consider them in calculating the protester's on-time delivery rate. It is the protester's burden to present sufficient evidence to prove its case, Waugh Controls Corp., B-216236.2, Apr. 18, 1985, 85-1 CPD ¶ 441 at 4, and where it fails to do so, we will not find in its favor.<sup>3</sup>

The protester further complains that the agency "automatically blamed" it for units that failed to pass operational testing after repair without determining whether the failure to pass the testing was linked to the repair. Air Shunt fails to describe any specific instances in which QDRs were issued for deficiencies unrelated to the repairs that it had performed, however. Accordingly, even assuming for the sake of argument that the protester is correct in alleging that the agency automatically construed the issuance of all QDRs as indicative of negative performance on its part, it has not demonstrated that any quality deficiencies were in fact improperly attributed to it.

In connection with its complaint that the agency should not have rated as unsatisfactory its performance for the company that reported that it no longer did business with Air Shunt due to quality issues, the protester argues that the Coast Guard was supposed to ask the reference about the protester's performance in

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<sup>3</sup> We do think that the contracting officer erred in her calculation of Air Shunt's late delivery rate under contract No. -00005 by overlooking the fact that the due date for one of the purportedly late orders, No. DTTCG38-01-F-H10510, had been modified and by mistaking the date that another purportedly late order, No. DTTCG38-03-F-H10503, was received. In the latter connection, the chart submitted by the contracting officer as an attachment to her April 20 letter shows that the five items repaired under the order were due on May 9, but not received until May 19; the records from the Aviation Maintenance Management Information System submitted by the Coast Guard show a receipt date for each of these items as April 9, however, a date consistent with the protester's asserted shipment date of April 4. We are not persuaded that the error, which resulted in Air Shunt's late delivery rate under contract No. -00005 being overstated by approximately 9 percent, had a prejudicial impact on the evaluation of Air Shunt's performance under the contract, however, given that the protester also had a QDR rate under the contract that the agency characterized as high.

repairing the parts at issue in this solicitation, as opposed to requesting an overall assessment of the company. The contracting specialist responds that when she contacted Air Shunt's references, she queried them about Air Shunt's performance under the contracts that Air Shunt identified in its proposal, inquiring as to the percentage of late deliveries and the number of deficiency reports filed and action taken for correction. Since the reference furnished the information that it no longer does business with Air Shunt due to quality issues in response to the contracting specialist's inquires regarding the protester's performance, we think that the agency reasonably interpreted the comment as bearing on the quality of Air Shunt's past performance.

Finally, regarding the allegation raised by the protester in its April 6 comments that the agency considered only one contract in evaluating InAir's past performance, the contracting officer's Justification for Award (a redacted version of which was furnished to the protester) demonstrates that this allegation is factually incorrect.

The protest is denied.

Anthony H. Gamboa  
General Counsel